

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.

Rulemaking 04-04-003  
(Filed April 1, 2004)  
QF Issues

Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-Run and Long-Run Avoided Costs, Including Pricing for Qualifying Facilities.

Rulemaking 04-04-025  
(Filed April 22, 2004)  
QF Issues

**ADMINISTRATIVE LAW JUDGES' RULING  
DENYING CAC/EPUC'S MOTION TO STRIKE TESTIMONY OF  
PACIFIC GAS AND ELECTRIC COMPANY**

On November 16, 2005, the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC) filed a joint motion to strike specific sections of testimony produced by Pacific Gas and Electric Company (PG&E). On November 28, 2005, PG&E filed a response. CAC/EPUC's motion to strike is denied, without prejudice, to renewal at the appropriate time during the evidentiary hearing.

**CAC/EPUC Motion to Strike**

The gravamen of the CAC/EPUC motion is that PG&E did not respond to some CAC/EPUC data requests on the grounds of confidentiality, relevance and burden. CAC/EPUC claims that their right to cross-examine PG&E on the portions of testimony covered by PG&E's objections is compromised. CAC/EPUC also argue that their right to cross-examine is even more important

since PG&E is a principal party and the data covers integral, non-collateral, matters. From CAC/EPUC's perspective, their right to a fair hearing and fundamental principals of due process require that they either be able to cross-examine the PG&E witness on five areas,<sup>1</sup> or that portions of PG&E's testimony that cover the objected areas be struck.

As examples, CAC/EPUC states that PG&E makes assertions in its direct testimony that QF contract costs are more expensive than some recent power purchase agreements (PPA), but PG&E claims that the PPAs are privileged documents and refuses to disclose them. PG&E also allegedly objects to the production of documents on its resource plans from the 1980s as not relevant and overly burdensome, but at the same time refers to QF contracts executed in this time period as expensive resources.

CAC/EPUC's concern is that if these five portions of testimony are allowed to stay in PG&E's direct testimony, without CAC/EPUC having the opportunity to review supporting data and documents for this testimony, that they would be prejudiced and the Commission would have testimony in the record that was untested.

### **PG&E Opposition**

In summary, PG&E opposes the CAC/EPUC motion on the grounds that the motion to strike is an unjustified, inappropriate and untimely motion, and instead CAC/EPUC should have filed a motion to compel date responses close in time to PG&E's objections to same. In particular, PG&E denies that CAC/EPUC's right to cross-examine PG&E's witnesses and/or its right to

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<sup>1</sup> These five areas are set forth with particularity in CAC/EPUC's motion, p. 3.

hearing due process has been jeopardized by PG&E's objections to data requests. In point of fact, PG&E notes that none of the cases CAC/EPUC cite in its moving papers supports their arguments, and in fact all involve refusal of witnesses to answer questions on the stand.

PG&E stands by its objections to CAC/EPUC's data requests, but argues that those objections do not deprive CAC/EPUC of the opportunity to cross-examine the PG&E witnesses when they take the stand.

### **Discussion**

It appears that CAC/EPUC's preparation for the evidentiary hearings might have been affected by PG&E's objections to their data requests and refusal to produce requested information and documents. However, that does not impact on CAC/EPUC's right and/or ability to cross-examine the PG&E witnesses. When the PG&E witnesses take the stand, CAC/EPUC will have the opportunity to cross-examine them. As PG&E points out in its opposition to the motion to strike, if PG&E objects to a question on cross-examination, the ALJ will rule on the objection. If the objection is overruled, the witness will answer; if the objection is sustained, the witness will not answer that question. In either event, CAC/EPUC will be exercising the right to cross-examine the PG&E witnesses.

If it appears to the ALJ that PG&E should have produced documents or responses to data requests that it did not under a claim of confidentiality, relevancy or burden, that can be addressed and remedied at the hearing. If warranted, PG&E can be directed to provide information that it previously withheld, and CAC/EPUC can be given time to review it before it concludes its cross-examination.

In the interim between now and the evidentiary hearings, CAC/EPUC and PG&E still have the opportunity to see if they can resolve any of the disputed

areas of testimony. While it does appear from CAC/EPUC's moving papers that they took the initial steps at the required "meet-and-confer" to discuss the problem with PG&E, it also is clear from PG&E's response that, perhaps, further negotiating between the parties might be fruitful.

Therefore, **IT IS RULED** that the motion of the Cogeneration Association of California and the Energy Producers and Users Coalition to strike specific sections of testimony produced by Pacific Gas and Electric Company is denied without prejudice.

Dated January 9, 2006, at San Francisco, California.

/s/ CAROL BROWN  
Carol Brown  
Administrative Law Judge

/s/ JULIE HALLIGAN  
Julie Halligan  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Denying CAC/EPUC's Motion to Strike Testimony of Pacific Gas and Electric Company on all parties of record in this proceeding or their attorneys of record.

Dated January 9, 2006, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

**N O T I C E**

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